IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition 131 (S/S) 2001
(Old No. 21559 of 1991)

Jehtu Prasad S/o Late Ram Prasad Bhatt
R/o Village Manpur, Patti Bara Gaddi,
Post office Manpur, District-Uttarkashi (Since died)

Substituted by:

1. Smt. Annpurna Devi widow of late Jethu Prasad
2. Kailash Prasad S/o late Jethu Prasad
3. Vijay Mohan S/o late Jethu Prasad
   All residents of Village-Manpur, Patti Bada Gaddi,
   Post Office-Manpur, District Uttarkashi.

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Petitioners

Versus

State of Uttar Pradesh through
Secretary, Department of Irrigation,
Vidhan Sabha Marg, Lucknow
and three others.

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.....Respondents

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Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner for issue of writ of certiorari to quash the impugned sanction order dated 18.02.1991, contained in Annexure No. 3 to the writ petition as well as the impugned order of retirement dated 19.7.1991, contained in Annexure No. 10 to the writ petition.

The show cause notice dated 18.02.1991 requiring the petitioner to retire on 30.06.1991 on completion of age of superannuation was issued and, accordingly, the petitioner was compulsorily retired on completion of age of superannuation on 30.6.1991. The representation of the petitioner against the show cause

notice as also rejected which was communicated to him on 19.07.1991, contained in annexure No. 10 to the writ petition.

The petitioner has challenged the order of compulsory retirement on completion of age of superannuation on the ground that he had not completed the age of 60 years on 30.06.1991. The basis of the assertion is the School Leaving Certificate, which was filed by him alongwith the representation. On the representation of the petitioner, the Executive Engineer called a report from the District Employment Officer who also said that the record relating to the petitioner's registration is not available with him. Thereafter the petitioner was sent for medical examination. In the medical examination, the Chief Medical Officer concerned reported the age of the petitioner to be 47 years in the year 1191.

A counter affidavit has been filed by the respondents, in Para-4 of which a categorical statement has been made that in the service-book the age of the petitioner was recorded to be 19.06.1931. Therefore, the petitioner completed the age of 60 years on 19.06.1991 and was accordingly retired on 30.06.1991.

The State of U.P. has framed rules known as the Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974, rule 2 of which provides for determination of correct date of birth or age which is reproduced as under:-

> "**2. <u>Determination of correct date of birth or age-</u>** The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth

or the age recorded in his service book at the time of his entry into the Government service **shall be deemed to be his correct date of birth or age,** as the case may be, for all purposes in relation of his service, including eligibility for promotion, **superannuation, premature retirement or retirement benefits,** and no application or representation shall be entertained for correction of such date of age in any circumstances whatsoever."

Rule 3 gives overriding effect to these rules. It provides that notwithstanding anything contrary contained in the relevant service rules or orders.

Under Rule 2 the legal friction has been created by the subordinate legislation and by this legal fiction the record date of birth in the service-book is date of birth for the purposes of superannuation even otherwise it may not be correct date of birth or age. The legal fiction created must be given its full effect as held by the Apex Court in case **Dipak Chandra Ruhidas versus Chandan Kumar Sarkar,** reported in Judgments today 2003 (7) Supreme Court, page 99. Para-12 of the judgment is reproduced as under:-

"In **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others,** reported in JT 2002 (10) SC 5, this Court stated:

"*The purpose and object of creating a legal fiction in the status is well known. When a legal ficltion is created, it must be given its full effect. In* ***East End Dwellings Co. Ltd. v. Finsbury Borough council,*** *[(1951) 2 All. E.R. 587], Lord Asquith. J. stated the law inj the following terms:-*

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real he consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably

have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statue says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

"The said principle has been reiterated by this Court in ***M. Venugopal v. Divisional Manager, Life Insurance corporation of India, Machilipatnam, A.P. & Anr.*** *[(1994) 2 SCC 323). See also* ***Indian Oil Corporation Limited v. Chief Inspector of Factories & Ors. etc.*** *[1998) 5 SCC 738),* ***Voltas Limited, Bo,mbasy v. Union of India & Ors.,*** *[1995 Supp. 2 SCC 498],* ***Harish Tandon v. Addl. District Magistrate, Allahabad, U.P. & Ors.*** *[(1995) 1 SCC 537) and* ***G.Viswanathan etc. v. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr.*** *[(1996) 2 SCC 353]."*

Therefore, the authorities rightly compulsorily retired the petitioner on 30.06.1991 according to the date of birth recorded in service-book. The petitioner did not dispute the date of birth recorded in his service-book in his original petition. When this fact was disclosed in the counter affidavit, the petitioner in his rejoinder affidavit has not disputed the entry of age in his service-book.

Therefore, the petition is devoid of merits and is hereby dismissed. No order as to costs.

(P.C. Verma, J.)

27.08.2003
P.Singh